

RECEIVED

NOV 10 1999

FCC MAIL ROOM

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
Application of New York Telephone)
Company (d/b/a/ Bell Atlantic – New York),)
Bell Atlantic Communications, Inc. NYNEX)
Long Distance Company and Bell Atlantic) CC Docket No. 99-295
Global Networks, Inc., for Authorization)
To Provide In-Region, InterLATA Services in)
New York)

COMMENTS OF
THE CONSUMER FEDERATION OF AMERICA

INTRODUCTION

The Consumer Federation of America (CFA) is the nation's largest consumer advocacy group. Founded in 1968, CFA is composed of over 250 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations. CFA's purpose is to represent consumer interests before the Congress and the federal agencies and to assist its state and local members in their activities in their local jurisdictions.

CFA has participated in every section 271 application that has been considered by the Federal Communications Commission (FCC). CFA has also participated in the collaborative state proceedings in several states. In particular, CFA has filed testimony and participated in the process in New York.

GETTING TO THE GOAL LINE AND CROSSING IT ARE NOT THE SAME

The section 271 process in New York has come down to the goal line. Under the watchful eye of the referee – the New York Public Service Commission (NYPSC) – Bell

Atlantic has made a wonderful 99-yard run. Unfortunately, it fumbled the ball on the one-yard line. It wants the touchdown anyway, but the rules don't allow it. You have to cross the goal line to score.

The NYPSC and the Department of Justice (DOJ) agree that the first 99 yards have been covered, but there is a huge scramble for the ball. The NYPSC says Bell Atlantic has already crossed the goal line. The Department of Justice says it has not, but feels it is too soon to blow the whistle and start over from scrimmage.

In these comments, CFA proposes a way for Bell Atlantic to recover the fumble in the end zone, but it will have to earn the touchdown by providing parity.

In order to sort things out and understand how Bell Atlantic put regulators in this predicament, it is useful to review how the implementation of section 271 has unfolded in New York. Bell Atlantic's long run has required making and implementing a number of changes in its operating systems and subjecting them to rigorous tests. It has passed a slew of these tests, but in the most recent month, Bell Atlantic did not pass all of the statistical tests in each of the areas deemed critical to demonstrate parity. It has never passed all of the tests in any given month. There are still some critical measures it has never passed.

This is true even after the NYPSC redefined some rules that had proven troublesome. The NYPSC believes that these rules will have no material affect on the outcome of the game (sort of like not calling pass interference on an uncatchable ball). Even if one is inclined to accept the NYPSC's judgement on the redefinition of the critical measures, the final changes should have been adopted as part of the collaborative process before the application was filed. Bell Atlantic's desire to get the play started may have put it off sides. In any event, the NYPSC

believes Bell Atlantic will solve the remaining problems, and get back on side before the action begins. The FCC has said it does not want any change after the applications are filed.

As good any football fan knows, when you the play get this close to the goal line with bodies flying every which way, the question of whether or not the ball broke the plane of the goal line can be a tough judgement call. Every good football coach also knows that the team is a lot better off planting both feet firmly in the end zone and holding the ball in the air. The last thing they want is to leave the outcome to the replay official, the FCC, which has declared that it will not approve applications based on promises. That is what Bell Atlantic has done by celebrating a step too soon.

COMPETITORS

The Extent of Competition

The current debate centers on very narrow issues of parity for specific types of operating support systems for a very good reason. There would appear to be no doubt about the existence of adequate competitive alternatives to meet the requirements of section 271 (C) (1) of the Act have.

The DOJ concludes that competitors have approximately 1.1 million lines statewide, out of a total of 12.7 million in the state. About 30 percent of these competitor lines – over 300,000 are residential. The DOJ finds competition in all parts of the state along all three entry paths. The DOJ generally concludes that this level of competition indicates that facilities based competition is available sufficiently to meet section 271(C) (1) conditions.

The Availability of Alternatives for Residential Customers

CFA took a different, common sense approach to this question. An attempt was made to purchase local telephone service from a competitor in 25 large cities and small towns in the Bell Atlantic service territory in every area code in the state. MCI has announced a statewide residential tariff and we found that the service is available in all places at prices that are competitive. It was being generally advertised. As with the start of any market, there is some confusion among the service representatives of the competing companies about where service is available. Consumers will have to learn how to shop for local service, but there is no doubt that readily identifiable alternatives are available and hundreds of thousands of consumers have switched in the state.

The price of MCI's competing standalone local service was about 5 percent less than the incumbents. When bought in combination long distance (any plan) an additional \$5 was taken off the bill when local and long distance were combined. Given the rates in New York, this constitutes an additional discount off of the typical local bill of 10 to 15 percent. The average customer, who wants a local and long distance company, could save between 15 and 20 percent off their local bill.

It is important to stress that the existence of competition in New York adequate to support the conclusion that the market is open is the result of the vigorous effort by the NYPSC to require Bell Atlantic to implement that conditions of the prefiling statement. CFA has maintained that by putting the conditions in place and getting them right over the course of a significant period has given competitors with serious intentions of competing time to put down

their roots. We have argued that under the right market opening conditions, issues of geographic spread would take care of themselves, as they appear to have done in New York.

THE PUBLIC INTEREST TEST

Throughout the process of evaluating Section 271 applications, CFA has debunked the claims by the RBOCs that their entry into long distance would be to the benefit of average residential customers. Their tariff filings have been inferior and their estimates of benefits inflated. At the same time, the potential gains from local competition have been underestimated. The local companies were not providing a benefit in long distance and they were not opening their local markets.

Long Distance Rates

In the eighteen months since we last examined this issue, the public interest arithmetic has changed considerably. In that period the long distance industry embarked upon a vigorous campaign of price discrimination that is well-documented in FCC analysis (see Exhibit 1). The industry has segmented the market with minimum monthly requirements and escalating monthly fees that reward high volume users and drive up the cost of long distance service for average and low volume users.

AT&T, which serves the vast majority of residential long distance customers, defends its pricing practices by arguing that consumers who do not want to pay these fees can give up having a long distance company and use a dial-around service. Because dial-around services are confusing and can be very expensive, they are not a substantial option. There is virtually no competition for low volume long distance users among the established companies. Knowing that

there are no alternatives, it invites consumers to switch. At the same time, it continues to argue that the RBOCs should not be allowed to enter the market.

As a result of the exercise of this market power, we have recently estimated that low and average volume users have endured a net increase in their bills of over \$2 billion. They have also failed to enjoy a fair share of a four billion dollar reduction in access charges, because they have been funneled through to business and high volume consumers. This has cost low volume consumers another \$.5 billion.

We believe that this \$2.5 billion could be competed back into the pockets of consumers if vigorous competition developed in the bottom of the market. The existing set of long distance companies has shown no interest in attracting these customers. The RBOCs have. For example, even if SBC's Oklahoma tariff were available nationwide and it lives up to its commitment to impose no minimum use requirement, low volume users could save \$1 billion.

At present, there are no guarantees that Bell Atlantic will behave in a manner that treats low volume consumers fairly, although it has said it intends to offer attractive packages for consumers with bills below \$5. We would encourage Bell Atlantic and all section 271 applicants to file proposed tariffs as part of the public interest discussion.

Local Rates

The public interest arithmetic in the local market also appears favorable in New York. As noted, substantial discounts are available. Conditions will vary from state-to-state and UNE prices are critical to the offer of discounts. In New York, the potential savings represent about three-quarters of the long-term potential gains from competition, as estimated by the FCC's own Synthesis Proxy Cost Model (see Exhibit 2). In New York, there would appear to be about

\$10.50 of inefficiencies, misallocated costs, etc., embedded in local service costs that could be weeded out by vigorous competition. Of this, about \$7.85 is recoverable in the intrastate jurisdiction. The savings of \$6 per month described above would capture three-quarters of that for the residential ratepayer.

If the residential tariff available in New York (5%) and discounted local-long distance bundle (\$5) were available nationwide, consumers would save close to another \$9 billion.

Given these significant potential benefits, it is important to get competition going in New York across all market. However, it remains necessary to ensure that the market is and remains open, or none of the benefits will be realized. If competitors cannot get their bundles out to the public, then the public will not get the direct benefits available. Bell Atlantic will not feel the pressure to make attractive long distance offers.

RECOVERING THE FUMBLE: COMPETITIVE CONDITIONS

CFA has consistently recommended that the RBOCs be allowed to enter long distance when they have provided parity to competitors and demonstrated to regulators that they can and will sustain it. We have argued that if the conditions were put in place quickly and available for a significant period of time, competitors would have the confidence to make investments and decisions that would build a competitive base. CFA has stated that sustained parity for three months would be a convincing demonstration.

Parity before Entry

Bell Atlantic must achieve parity before entry is allowed. At the same time, it is clear that virtually everything has been done to open the market. The areas of remaining problems are small, and do not greatly affect residential customers.

Therefore, we recommend that Bell Atlantic be allowed to recover its own fumble. Bell Atlantic should modify its Performance Assurance Plan to include a penalty for selling long distance in region before it has met all of the statistical measures of parity in the critical areas. The penalty imposed for selling long distance prior to compliance should be more than adequate to ensure it will not do so. This penalty should be so large that it will not even consider the gaming of the system (i.e. can I make more in long distance than it costs me in penalties). We suggest that a \$250 million for each month that Bell Atlantic sells long distance before it is at parity would be adequate to ensure compliance.

The New York Public Service Commission would certify actual compliance, with not promises or expectation of compliance. The FCC would review that certification in a compliance proceeding. The penalty would automatically trigger if Bell Atlantic sells long distance before both regulatory agencies have acted.

Sustained Parity

We remain convinced that sustained parity is necessary to demonstrate that markets are irreversibly open. Requiring a short three-month period to demonstrate sustainability can be replaced with a more severe penalty after entry. We do not believe that the monetary penalties in the current Performance Assurance Plan are adequate to ensure against backsliding. Once parity

has been demonstrated, in order to assure that parity is sustained, we recommend that a layer of business interruption penalties be added atop the monetary penalties.

Bell Atlantic would have to interrupt its long distance business if it repeatedly fails to maintain parity. The failure to provide parity interrupts the business of its local competitors. As long as Bell Atlantic is in the long distance market, but not providing parity, it gains an advantage. If the problem persists, Bell Atlantic should give up that advantage.

Therefore, we recommend that if Bell Atlantic fails a specific measure for three months, it should cease advertising and marketing long distance service, including bundles of local and long distance service. If it fails to pass all critical measures for four consecutive months (i.e. fails one or more measures for four months in a row), it should stop advertising and marketing long distance service, including bundles of local and long distance service. If it fails to provide parity for six months in a row, it should stop taking any new order for long distance, until it demonstrates that it can provide parity for three consecutive months.

CONCLUSION

For the foregoing reasons, we recommend that the Commission approve the entry if Bell Atlantic amends its Performance Assurance Plan as we propose and the NYPSC approves that amendment. If it does not make these modifications, the FCC should reject the application.

Approving entry, subject to an amended PAP, in which Bell Atlantic waits to come into compliance, reconciles the NYPSC conclusion with the DOJ recommendations. The Section 271 process will be complete, except for the compliance review, ending the uncertainty for all market participants. It strengthens the hand of the New York Commission to ensure parity is achieved and maintained.

Finally, to facilitate the evaluation of the public interest question, we urge the company to file long distance tariff that describes how it ensures that low volume users benefit from its entry into long distance.

**EXHIBIT 2:
PRICE CHANGES AT VARIOUS LEVELS OF USE**

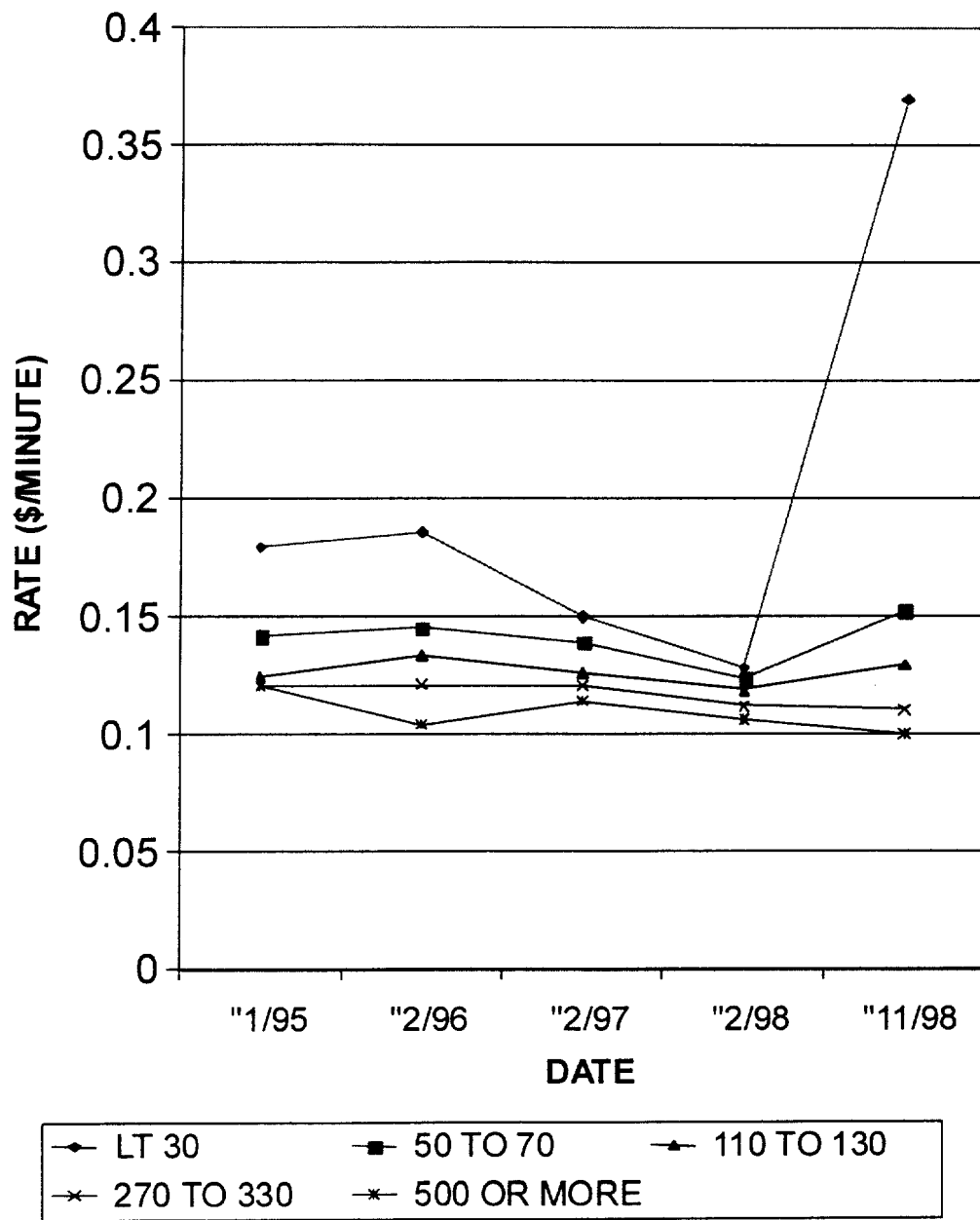


EXHIBIT 2
POTENTIAL GAINS IN BASIC SERVICE PRICES FROM VIGOROUS COMPETITION
ESTIMATION OF OVERRECOVERY OF COSTS FOR LOOP AND PORT BASED ON
EMBEDDED COSTS COMPARED TO FORWARD LOOKING COSTS

STATE	COST ESTIMATES						EFFICIENCY GAINS					
	EMBED	FCC	BCM		FCC		HTFLD	"1995"			"1998"	FCC
		BCPM	HAT	ARMI S	HTFL D	SPCM	"5.0"	LOW	HIGH	LOW	HIGH	SPCM
AL	36.38	30.98	29.31	26.46	19.19	28.86	26.06	9.92	17.19	5.40	10.32	7.52
AR	43.48	34.48	28.08	33.56	24.34	26.95	24.93	9.92	19.14	9.00	18.55	16.53
AZ	31.18	27.49	21.33	21.26	15.41	17.94	17.22	9.92	15.77	3.69	13.96	13.24
CA	27.97	20.26	18.18	18.05	13.09	15.60	13.65	9.92	14.88	7.71	14.32	12.37
CO	35.72	27.82	24.33	25.80	18.71	20.40	19.93	9.92	17.01	7.90	15.79	15.32
DC	21.11	16.62	13.35	11.19	8.11	11.65	11.77	9.92	13.00	4.49	9.34	9.46
DE	31.85	24.61	21.37	21.93	15.90	18.96	17.92	9.92	15.95	7.24	13.93	12.89
FL	30.32	23.60	19.09	20.40	14.79	17.12	15.34	9.92	15.53	6.72	14.98	13.20
GA	37.41	26.83	23.24	27.49	19.93	21.36	19.94	9.92	17.48	10.58	17.47	16.05
IA	41.50	29.31	23.37	31.58	22.90	21.04	18.72	9.92	18.60	12.19	22.78	20.46
ID	50.86	32.68	27.60	40.94	29.69	25.25	22.38	9.92	21.17	18.18	28.48	25.61
IL	30.65	22.44	19.58	20.73	15.03	15.67	14.85	9.92	15.62	8.21	15.80	14.98
IN	30.50	25.88	20.65	20.58	14.93	20.53	17.76	9.92	15.57	4.62	12.74	9.97
KS	42.93	31.28	25.38	33.01	23.94	22.86	22.58	9.92	18.99	11.65	20.35	20.07
KY	35.37	31.25	29.73	25.45	18.46	29.45	24.12	9.92	16.91	4.12	11.25	5.92
LA	36.37	29.12	25.68	26.45	19.18	24.11	21.94	9.92	17.19	7.25	14.43	12.26
MA	23.04	22.09	20.01	13.12	9.52	16.23	15.82	9.92	13.52	0.95	7.22	6.81
MD	28.48	23.35	21.08	18.56	13.46	17.88	17.29	9.92	15.02	5.13	11.19	10.60
ME	44.16	32.06	31.36	34.24	24.83	29.40	27.66	9.92	19.33	12.10	16.50	14.76
MI	32.87	25.09	20.69	22.95	16.64	19.10	16.86	9.92	16.23	7.78	16.01	13.77
MN	39.36	26.23	22.99	29.46	21.36	20.53	20.13	9.90	18.00	13.13	19.23	18.83
MO	38.35	27.07	23.56	28.43	20.61	21.38	20.39	9.92	17.74	11.28	17.96	16.97
MS	41.96	39.10	38.61	32.04	23.24	38.34	34.22	9.92	18.72	2.86	7.74	3.62
MT	64.50	42.39	32.29	54.58	39.58	29.95	26.55	9.92	24.92	22.11	37.95	34.55
NC	37.24	26.84	23.28	27.32	19.81	21.47	20.53	9.92	17.43	10.40	16.71	15.77
ND	60.52	35.79	28.92	50.60	36.69	24.37	25.07	9.92	23.83	24.73	35.45	36.15
NE	46.45	31.18	31.39	36.53	26.49	25.19	29.69	9.92	19.96	15.27	16.76	21.26
NH	38.23	28.08	26.41	28.31	20.53	23.61	22.74	9.92	17.70	10.15	15.49	14.62
NJ	26.78	20.14	18.36	16.86	12.23	14.99	13.88	9.92	14.55	6.64	12.90	11.79
NM	44.59	31.85	27.40	34.67	25.14	23.55	22.82	9.92	19.45	12.74	21.77	21.04
NV	39.09	32.48	31.81	29.17	21.15	23.74	26.48	9.92	17.94	6.61	12.61	15.35
NY	26.50	21.74	19.64	16.58	12.02	16.03	11.69	9.92	14.48	4.76	14.81	10.47
OH	31.32	24.03	19.41	21.40	15.20	17.58	15.90	9.92	16.12	7.29	15.42	13.74
OK	36.51	31.41	27.90	26.59	19.28	24.69	24.46	9.92	17.23	5.10	12.05	11.82
OR	37.91	27.35	23.94	27.99	20.29	19.87	19.27	9.92	17.62	10.56	18.64	18.04
PA	30.16	23.57	21.16	20.24	14.67	17.61	16.86	9.92	15.49	6.59	13.30	12.55
RI	27.59	24.12	20.25	17.67	12.82	17.22	15.75	9.92	14.77	3.47	11.84	10.37

SC	38.47	29.31	25.54	28.55	20.70	24.66	22.09	9.92	17.77	9.16	16.38	13.81
SD	60.94	38.97	32.06	51.52	37.00	27.30	27.39	9.42	23.94	21.97	33.55	33.64
TN	37.19	38.80	26.34	27.27	19.77	24.96	22.48	9.92	17.42	-1.61	14.71	12.23
TX	35.06	26.15	21.39	25.14	18.23	19.07	17.78	9.92	16.83	8.91	17.28	15.99
UT	37.93	25.72	22.04	28.01	20.31	18.55	17.68	9.92	17.62	12.21	20.25	19.38
VA	29.77	24.98	21.74	19.85	14.39	19.17	18.64	9.92	15.38	4.79	11.13	10.60
VT	45.94	33.91	33.34	36.02	26.12	31.47	29.62	9.92	19.82	12.03	16.32	14.47
WA	33.40	25.32	21.35	24.48	17.02	18.33	17.15	8.92	16.38	8.08	16.25	15.07
WI	37.10	24.29	19.05	27.18	19.71	18.75	15.50	9.92	17.39	12.81	21.60	18.35
WV	41.36	36.39	32.51	31.44	22.80	34.03	33.23	9.92	18.56	4.97	8.13	7.33
WY	58.06	45.87	39.30	48.14	34.91	33.55	33.41	9.92	23.15	12.19	24.65	24.51
AVG.	32.71	25.37	21.89	22.81	16.51	19.27	17.66	9.90	16.19	7.34	15.05	13.44